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International Law -- Conflicting Jurisdictions

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International Law—Conflicting Jurisdictions

The recent case involving Mehdi Eatessami,[1] an Iranian-born Israeli citizen extradited from New York to Switzerland, points out again, this time in the context of international extradition, the warning of the New York Court of Appeals[2] that the "center of gravity"[3] concept so important in choice of laws is not fungible with the concept of "minimal contacts" for jurisdictional purposes.

Eatessami was accused by the Swiss of having masterminded a loan swindle against the Swiss Bank Corporation. Accounts opened with the main office of the Swiss Bank, in Geneva, were filled with counterfeit stock certificates prepared and mailed from New York. Subsequent loans totalling 300,000 dollars were secured and the proceeds paid to Eatessami and his confederates through New York banks.

In an earlier tort action brought in the New York state courts for fraud,[4] the question of jurisdiction under section 302(a)(2) of the New York procedure act had been determined. That section provides that New York courts may assert personal jurisdiction over a nondomiciliary who "commits a tortious act within the state. . . ,"[5] and coincides with similar "long-arm" statutes enacted in other states.[6] In this pre-trial determination of jurisdiction, a finding that the various fraudulent communications between Eatessami and the Swiss Bank had been prepared and mailed in New York supplied the necessary acts to support jurisdiction without violation of due process. The court did not determine which law, Swiss or New York, would apply in a trial on the issues. Generally, choice of laws

[1] United States *ex rel.* Eatessami v. Morasco, 275 F. Supp. 492 (S.D.N.Y. 1967).

[2] Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., 15 N.Y.2d 443, 463, 209 N.E.2d 68, 80, 261 N.Y.S.2d 8, 23 (1965).

[3] That jurisdiction would be the "center of gravity" whose law and public policy is most concerned with the issues raised by the litigation. *See* Hanson v. Denckla, 357 U.S. 235, 254 (1958); Babcock v. Jackson, 12 N.Y.2d 473, 481-82, 191 N.E.2d 279, 283-84 (1963).

[4] Swiss Bank Corp. v. Eatessami, 26 App. Div. 2d 287, 273 N.Y.S.2d 955 (1966).

[5] N.Y.R. CIV. PRAC. 302(a)(2) (McKinney 1967).

[6] *See, e.g.*, N.C. GEN. STAT. § 55-145 (1966). *Compare* Totero v. World Telegram Corp., 41 Misc. 2d 594, 245 N.Y.S.2d 870 (Sup. Ct. 1963) *with* Painter v. Home Fin. Co., 245 N.C. 576, 96 S.E.2d 731 (1957).

teaches that the law of the place of the last occurrence necessary to make the actor liable governs.[7] However, determining whether that last event is the receipt of the fraudulently obtained funds (New York), or the making of the fraudulent representation (Geneva), is unconnected with the question of jurisdiction. Under certain situations, New York may assert personal jurisdiction, yet be required to apply the law of a sister state, or of a foreign nation.[8]

Yet little more than a year later, the Swiss government filed a formal request[9] for the extradition of Eatessami. Extradition, the established method of recovery of the international fugitive,[10] is governed in the United States by treaty[11] and federal statute,[12] and

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[7] H. GOODRICH, CONFLICT OF LAWS 168 (1964).

[8] *Cf.* Bernhardt v. Polygraphic Co., 350 U.S. 198 (1956); New York Life Ins. Co. v. Dodge, 246 U.S. 357 (1918); Walton v. Arabian American Oil Co., 233 F.2d Cir. 1956, *cert. denied,* 352 U.S. 872 (1956).

[9] A formal request for extradition requires authenticated documents supporting the requesting state's contention that the surrender of the accused is justified, including identification of the accused, a statement of the charges with texts of the relevant laws, a warrant for arrest, depositions and related evidence. Memorandum in opposition to writ of habeas corpus filed on behalf of the Swiss government, Dkt. No. 67 Civil 3983 (S.D.N.Y. 1967).

[10] *See, e.g.,* Valentine v. United States *ex rel.* Neidecker, 299 U.S. 5 (1936). The actual proceedings differ, however, from normal probable cause cause hearings. For example, 18 U.S.C. § 3190 (1964) permits the demanding country to introduce ex parte depositions gathered at home, but the defendant may not do likewise. *In re* Oteiza y Cortes, 136 U.S. 330 (1890). Nor can the accused introduce evidence which contradicts the demanding country's proof, Collins v. Loisel, 259 U.S. 309 (1922); nor evidence to establish an alibi, Desmond v. Eggers, 18 F.2d 503 (9th Cir. 1927); nor evidence of insanity, Charlton v. Kelly, 229 U.S. 447 (1913); nor evidence that the statute of limitations has run, unless the treaty otherwise provides, Merino v. United States Marshal, 326 F.2d 5 (9th Cir. 1963). Furthermore, an American citizen may be held for extradition on deposition evidence which would not be admissible at a preliminary hearing on a domestic crime. Bingham v. Bradley, 241 U.S. 511, 517 (1916); Glucksman v. Henkel, 221 U.S. 508, 512 (1911); Wacker v. Bisson, 348 F.2d 602, 605 (5th Cir. 1965). Indeed, "all the fictitious niceties of a criminal trial at common law" are absent. Gluckman v. Henkel, 221 U.S. 508, 512 (1911). *See,* Note 61 COL L. REV. 105 (1961); *cf.* Evans, *Acquisition of Custody Over the International Offender—Alternatives to Extradition: A Survey of United States Practice,* [1964] BRIT. Y.B. INT'L L. 77.

[11] 18 U.S.C. §§ 3181, 3184 (1964). Extradition can take place only in pursuance to a treaty. Factor v. Laubenheimer, 290 U.S. 276, 287 (1933).

[12] *See* 18 U.S.C. §§ 3181-95 (1964). Interstate rendition is generally controlled by the Uniform Extradition Act, now adopted by all states except Alaska, Louisiana, Mississippi, Nevada, North Dakota, South Carolina, and Washington. New York and Rhode Island adopted the Act, amending section 6, so as to provide for "double-criminality," i.e., the offense must be criminal in both states. N.Y. CODE CRIM. PROC. § 834 (McKinney 1967); R.I. GEN. LAWS ANN. § 12-9-8 (1956). *See, e.g.,* People *ex rel.* Burtman

committed solely to the federal government as an adjunct of the treaty power.[13] Usually, the jurisdiction of the requesting state and that of the requested or asylum state over the accused is based upon the principle of territoriality.[14] That is, the particular treaty offense[15] must have been committed within the territorial jurisdiction of the requesting state, and the fugitive found within the territory of the asylum state.[16] Arguably, upon reviewing the finding of the United States Commissioner that Switzerland had sufficient basis for a claim to criminal jurisdiction over Eatessami, the federal district court was obligated to take notice of the similar proceedings of its New York counterpart. While full faith and credit does not generally apply between federal and state courts beyond enforce-

v. Silberglitt, 15 Misc. 2d 847, 187 N.Y.S.2d 536 (Sup. Ct. 1956) (books obscene in Pennsylvania not in New York); People *ex rel.* Albert v. Commissioner of Correction, 111 N.Y.S.2d 307 (Sup. Ct. 1952) (gaming tables illegal in Maryland are "games of skill" in New York).

[13] U.S. CONST. art. II, § 2. While the executive has no inherent power to extradite on its own initiative, Valentine v. United States *ex rel.* Niedecker, 299 U.S. 5 (1936), Congress does enjoy plenary power over aliens, Harisiades v. Shaughnessy, 342 U.S. 580, 587 (1952), and the immigration law "bristles with severities," Scales v. United States, 367 U.S. 203, 222 (1961). *See also* United States *ex rel.* Feretic v. Shaughnessy, 211 F.2d 262, 264 (2d Cir. 1955); *In re* Gonzalez, 217 F. Supp. 717 (S.D.N.Y. 1963); United States *ex rel.* Paschalides v. District Comm'r, 143 F. Supp. 310, 312 (S.D.N.Y. 1956).

[14] *See* Berge, *Criminal Jurisdiction and the Territorial Principle*, 30 MICH. L. REV. 238 (1931). But see the criticism of the territorial principle by Judge Frank in Walton v. Arabian American Oil Co., 233 F.2d 541, 543 & n.5 (2d Cir. 1956).

[15] Local law is used in defining the particular "treaty offense." *See* Petitt v. Walshe, 194 U.S. 205, 207, 218 (1904); United States *ex rel.* Rauch v. Stockinger, 269 F.2d 681 (2d Cir. 1959); *In re* Gonzales, 217 F. Supp. 717 (S.D.N.Y. 1963).

[16] The fugitive may have been in the asylum state when the crime was committed. United States v. Steinberg, 67 F.2d 77 (2d Cir. 1932), *cert. denied*, 287 U.S. 640 (1932); Wacker v. Beeson [*sic*], 256 F. Supp. 542 (E.D. La. 1966), *aff'd*, Wacker v. Bisson, 370 F.2d 552 (5th Cir.), *cert. denied*, 387 U.S. 936 (1967). *See also In re* Harris, 170 Ohio St. 151, 163 N.E.2d 762, 10 Ohio Op. 2d 99 (1959) (non-support constitutes an "act" within the jurisdiction of the requesting state, for extradition purposes).

[17] Here review of the commissioner's decision was through habeas corpus, an alternative is an action for a declaratory judgment. Wacker v. Bisson, 348 F.2d 602, 606 (5th Cir. 1965). The scope of review, in any case, is the same. Brownell v. Tom We Shung, 352 U.S. 180 (1956). The reviewing court determines only whether the magistrate had jurisdiction, whether the offense was within the treaty, and whether there is probable cause to believe the accused guilty. Collins v. Loisel, 259 U.S. 309 (1922). The courts test only the legality of the extradition proceedings; the wisdom of extradition remains for the executive to decide. 18 U.S.C. § 3184 (1964). *See* Note, 62 COL. L. REV. 1313, 1315 (1962); Note, 61 MICH. L. REV. 383, 387 (1962).

ment of judgments,[18] except in the taxation field,[19] the Supreme Court has been reluctant[20] to upset state court findings of jurisdiction. Moreover, federal courts have followed state jurisdictional laws in cases involving nondomiciliaries.[21] Furthermore, the determination of the state court that it had civil jurisdiction over Eatessami because of certain tortious acts done in New York, would imply that it also had criminal jurisdiction,[22] as those same acts were criminal under New York statute.[23] Ordinarily, the territorial sovereign, being competent to prosecute for offenses committed within its territory, would not extradite for such an offense.[24] However, without reference or mention of the New York court's findings, the federal court found the extradition proceedings legal, and following the approval of the Secretary of State, Eatessami was extradited to Switzerland.[25]

Was the federal district court correct? First, it is important to realize that it was concerned with treaty law.[26] Familiar learning teaches that treaties override state laws when a conflict arises. Be-

[18] Milwaukee County v. M.E. White Co., 296 U.S. 268, 275 (1935). *See also* 28 U.S.C. § 1738 (1964).

[19] Curry v. McCanless, 307 U.S. 357 (1939); Worcester County Co. v. Riley, 302 U.S. 292, 299 (1937).

[20] Except in extraordinary circumstances. *Cf.* Texas v. Florida, 306 U.S. 398, 342 (1939) (dissenting opinion of Frankfurter, J.).

[21] United States v. Montreal Trust Co., 358 F.2d 239, 249 (2d Cir. 1966) (concurring opinion); Arrowsmith v. United Press Int'l, 320 F.2d 219, 221 (2d Cir. 1963) (en banc).

[22] N.Y. PENAL LAW § 1930(1) (McKinney 1967).

[23] N.Y. PENAL LAW §§ 881(3), 884(5) (McKinney 1967).

[24] Evans, *The New Extradition Treaties of the United States,* 59 AM. J. INT'L L. 351, 354 (1965).

[25] Extradition was approved by the Secretary of State on the charges of obtaining money by false pretenses and the fraudulent use of counterfeited or forged private instruments. However, the Secretary determined that the record did not contain evidence that such instruments were counterfeited or forged in Switzerland, and so refused extradition for the forgery charge. Letter from the Secretary of State to the Swiss Ambassador, January 12, 1968. Eatessami was extradited on January 13, 1968 and will be tried under Articles 148 and 251 of the Swiss Criminal Code, relating to embezzlement and use of counterfeit securities. The Swiss statute provides for a maximum sentence of five years imprisonment. Letter from Bernard J. Reverdin to the writer February 23, 1968.

[26] Art. II § 4 of the Extradition Treaty Between the United States and Switzerland of May 14, 1900, 31 Stat. 1928, 1929 (1900), T.S. No. 354 (effective February 28, 1901), provides:

> Extradition shall be granted for . . . (4) The counterfeiting or forgery of public or private instruments; the fraudulent use of counterfeited or forged instruments.

Cf. Hauenstein v. Lynham, 100 U.S. 483 (1879), *rev'g,* 69 Va. 62 (1877).

yond reference to the applicable New York law for definition of the elements of the relevant treaty offense, the state jurisdictional law was not considered. Secondly, reference to New York state court decisions would support the conclusion of the federal court that indeed a crime, or at least punishable elements of a crime, had been committed within the territory of the requesting state, in this case Switzerland. In *People v. Adams*,[27] New York courts convicted an Ohio resident of the offense of obtaining money by false pretenses, though the defendant was, at the time of the crime and for a while thereafter, in Ohio, and did not come to New York until later. Similarly, in *People v. Zayas*,[28] the New York court held that it had jurisdiction to try the defendant for a crime committed partially in New York, where the false pretenses were made, and partially in Pennsylvania, where the money was received. Thus, by New York standards, culpable elements of the alleged crime had been committed in Switzerland, though Eatessami had remained all the while in New York.

Thirdly, the federal court apparently realized that the New York court was not attempting to assert a preëmptive jurisdiction. Had the New York court asserted exclusive jurisdiction based upon the "center of gravity" concepts familiar to choice of laws, the question might have been different. However, by merely determining that it had jurisdiction because of certain "minimal contacts" with the state, the New York court did not foreclose the assertion of a supplemental jurisdiction by another state,[29] such as Switzerland. And, as the federal court emphasized, any excessively complicated and technical application of traditional jurisdictional concepts is ill-suited to deal with the problems of multinational crime.[30] Thus the federal court was probably correct, and was able to insure the fulfillment of national treaty obligations without offending federalistic guidelines.

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[27] 3 Denio (N.Y.) 190, *aff'd* 1 N.Y. 173 (1848).
[28] 217 N.Y. 78, 111 N.E. 465 (1916).
[29] *Cf.* United States v. Arnhold & S. Bleichroeder, Inc., 96 F. Supp. 240 (S.D.N.Y. 1951); Eisler v. Soskin, 272 App. Div. 894, 71 N.Y.S.2d 682, *aff'd*, 297 N.Y. 841, 78 N.E.2d 862 (1948).
[30] *See Re* Vignoni, 17 Int'l L. Rep. 263, 264 (Chile, Sup. Ct. 1950).